Independent, Non-Partisan Erie County Legislative Redistricting Plan

MEMORANDUM

To: Adam Perry, Chairman
             Erie County Reapportionment Commission
             Erie County Legislature
             92 Franklin Street
             Buffalo, NY 14202

From: Dr. Michael Halberstam, Associate Professor, UB Law School
             Mr. Patrick Fitzgerald, UB Law School, Class of 2011

Date: May 6, 2011

Re: Independent, Non-Partisan Erie County Legislative Redistricting Plan

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We hereby submit an independent, non-partisan legislative redistricting plan to the Erie County Legislature and its Legislative Reapportionment Advisory Committee. We recommend that the legislature adopt this plan for the upcoming 2011 elections.

Attached are (1) hard copies of relevant data and district maps, including maps with street names, (3) electronic files of the data and maps in excel spreadsheet and PDF formats, and (4) electronic "shape files" of the plan that election officials can use for reproducing and operationalizing the complete plan with specialized software. The "shape files" are also important for experts to compare and analyze various features of the plan, such as exact district boundaries, precinct locations, etc.

Background

This plan was developed by an independent, nonpartisan group at UB Law School in close consultation with experts at the ACLU's national Voting Rights Project. The ACLU's national Voting Rights Project is an independent and nonpartisan voting rights advocacy group with substantial experience and technical expertise in redistricting. The ACLU has participated in drafting dozens of congressional and state legislative plans and innumerable local redistrictings since the 1970s. Its staff has been one of the most active and well-respected nongovernmental participants in redistricting during the past 40 years.

In conjunction with the decennial U.S. Census, the one-person/one-vote rule necessitates reapportionment of election districts to account for changes in population. A highly

Independent, Non-Partisan Erie County Legislative Redistricting Plan

political process for Erie County has potentially been rendered even more contentious during this redistricting cycle, because the reduction of the Erie County legislature from a 15-member to an 11-member body will cause four incumbents to lose their seats pitting incumbents against one another.

Purpose

The purpose of this submission is to provide an independent, nonpartisan, expert redistricting plan that is not motivated by the pursuit of electoral gains for any particular incumbent, but preserves communities of interest and protects against minority vote dilution, even as it creates more competitive election districts in the City of Buffalo itself.[1] The Independent Nonpartisan Plan redistricts Erie County into 11 legislative districts while adhering to constitutional, federal, state, and local principles and rules, including one-person/one-vote, the Voting Rights Act, the New York Home Rule Law, and the Erie County Charter.

Features of the Independent Nonpartisan Plan

One-Person/One-Vote

The Independent, Nonpartisan Plan divides the population of Erie County into 11, roughly equipopoulous districts. With a total population of 916,040 based on 2010 U.S. Census figures, each district therefore comprises an average of around 83,280 persons. Under federal law, state and local districting plans with a total population deviation under 10 % are presumptively constitutional.[2] The Independent Nonpartisan Plan maintains an overall 8.7 % deviation, with the greatest population in District 8 (population of 88,226) and the lowest population in District 4 (population of 80,957). It therefore satisfies the federal constitutional requirement of one-person/one-vote.

Minority Vote Dilution

The Independent Nonpartisan Plan creates minority-opportunity districts, or majority-minority districts, in District 2 and District 7. Our decision to include two minority opportunity districts with approximately 51% and 55% minority voting age populations, respectively, was motivated by the following considerations.

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[1] Herinafter, the "Independent Nonpartisan Plan."
[2] White v. Regester, 412 U.S. 755, 764 (1973); Brown v. Thomson, 462 U.S. at 842-43; Cox v. Larios, 542 U.S. 947 (2004).

Independent, Non-Partisan Erie County Legislative Redistricting Plan

Section 2 of the Voting Rights Act provides that a voting practice is unlawful if it "results" in discrimination, that is, if, based on the totality of circumstances, it provides minorities with "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b) (2006). Creating minority-opportunity districts in response to concerns about minority vote dilution reflects the tenets of the Voting Rights Act, because such districts give minority groups a realistic opportunity to elect candidates of their choice.[3]

The previous 15-district legislative plan included two majority-minority districts: District 3 with a 73 % African American population, and District 7 with a 68 % African American population. The current benchmark (the previous plan with the 2010 census data) demonstrates that both districts still remain above 70 % African American.

In the Independent Nonpartisan Plan, we were able to draw what we believe to be two politically cohesive, geographically compact minority-opportunity districts that exceed the 50 % minority voting age population threshold set by the Supreme Court. Drawing these two districts avoids a potential violation of the Voting Rights Act's proscription against minority vote dilution.

We were able to draw Districts 2 and 7 and still keep together almost all towns and villages with a population below around 83,000. Although subordinate to the Voting Rights Act, our goal was to respect the New York Home Rule law's prescription to keep villages and towns of a certain size intact.

The Supreme Court prohibits racial gerrymanders, especially districts that are unusual and "bizarrely" shaped. The majority minority districts we draw are contiguous, compact, are both located in the City of Buffalo, and make sense.

Finally, all other things being equal, we considered the competitiveness of the districts in our decision to draw two, rather than one, majority minority district. Rather than pack one district with a minority voting age population of 65% and above, thus creating a "safer" seat for a single minority incumbent, the Independent Nonpartisan Plan creates two, more competitive majority minority districts in the City of Buffalo. The plan does so, even as it complies with the Supreme Court's requirement in Bartlett v. Strickland, that a majority-minority district mandated by Section 2 be comprised of a geographically compact minority population that exceeds 50% MVAP.[4]

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[3] Thornburg v. Gingles, 478 U.S. 30 (1986); Growe v. Emison, 507 U.S. 25 (1993).
[4] Bartlett v. Strickland, 129 S. Ct. 1231, 1249 (2009) ("Only when a geographically compact group of minority voters could form a majority in a single-member district has the first Gingles requirement been met.")

District 2 in this plan is a minority opportunity district that relies on a coalition between African American and Hispanic voters to afford them the opportunity to elect a candidate of their choice.

In drawing the coalition district, we considered the following. The previous plan included two minority-opportunity districts. Due to the reduction of legislative districts from 15 to 11, however, it was no longer possible to draw two minority-opportunity districts with an African-American voting age population over 50 %, as required by the Supreme Court. On the other hand, reducing minority representation in the legislature and/or packing a single district with more than 65 % African-American voting age population – a result that was more likely if we failed to draw the coalition district – could raise independent concerns about minority vote dilution. It might be read as an illegitimate attempt to reduce the overall representation of minorities in the legislature – especially in connection with the downsizing of the Erie County Legislature. This coalition district -- as far as we are able to ascertain based on reliable existing data -- is permissible and does not violate any federal or state laws.

In a decision upheld in relevant respects by the Second Circuit, the U.S. District Court for the Northern District of New York, has held that "African-Americans and Hispanics may be considered as a single minority group under the Voting Rights Act if the coalition meets the three *Gingles* preconditions."[5] The *Gingles* preconditions are "(1) whether the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) whether the minority group is politically cohesive, *i.e.*, tends to vote as a bloc; and (3) whether the majority votes sufficiently as a bloc to enable it - in the absence of special circumstances . . . usually to defeat the minority's preferred candidate."[6] The Independent Nonpartisan Plan draws a coalition district that is contiguous and geographically compact. The choice of the coalition district also reflects an assumption of political cohesion among African Americans and Hispanics in new District 2, for which, at this time, we have only anecdotal evidence. Again, as far as we are able to ascertain based on reliable existing data, District 2 is permissible, and does not violate federal or state laws.

Compactness, Contiguity, and the New York Home Rule Law

Careful consideration was taken to ensure compact and contiguous districts while making every attempt to follow the New York Home Rule Law's prescription to keep villages and towns of a certain size together. Under New York's Municipal Home Rule law, Erie

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[5] Arbor Hill Concerned Citizens Neighborhood Ass'n. v. County of Albany, 2003 WL 21524820, at *5 (N.D.N.Y. July 7, 2003).
[6] *Id.*, at *4.

Independent, Non-Partisan Erie County Legislative Redistricting Plan

County is granted the power to adopt or amend a plan of reapportionment. N.Y. Mun. Home Rule Law § 10 (McKinney 2010). In para. 13 of Section 10 four factors to be considered in redistricting are listed according to their priority:

    i.   The plan shall provide substantially equal weight for the population of that local government in the allocation of representation in the local legislative body.

    ii.   In such plan adopted by a county, no town except a town having more than one hundred and ten per cent of a full ratio for each representative, shall be divided in the formation of representation areas. Adjacent representation areas in the same town or city shall not contain a greater excess in population than five per cent of a full ratio for each representative.

    iii.   The plan shall provide substantially fair and effective representation for the people of the local government as organized in political parties.

    iv.   Representation areas shall be of convenient and contiguous territory in as compact form as practicable.

As already stated, this plan maintains an overall 8.7 % deviation and otherwise complies with para. 13(a)(i) & (a)(ii)'s population requirements with only one exception. A very small section of Tonawanda is broken up for a variety of reasons, including contiguity, compactness and population size of Grand Island and the adjacent districts. In so doing, the Independent Nonpartisan Plan conservatively follows the existing district lines between Tonawanda, Amherst and the City as Buffalo, as closely as possible.

The Town of Cheektowaga is left intact with no splits in an attempt to maintain communities of interest to the best extent possible.

CONCLUSION

The maps, documents, and electronic files attached have been developed so as to provide the public with an accessible basis for comparison and election officials with all the resources to operationalize and implement the plan. We emphasize that this plan is independent, nonpartisan, and does not attempt to secure electoral gains for any particular incumbent. It reflects the implications of legislative downsizing for the representation of groups to the legislature. We believe that the Independent Nonpartisan Plan reflects a reasonable negotiation of the conflicts that necessarily arise in redistricting Erie County.

MH & PF

Districts_Summary

District	Population	Deviation	% Deviation	White	% White	Black	% Black	AmIndian	% AmIndian	Asian	% Asian	Hawaiian	% Hawaii	Other	% Other	Hispanic C	% Hispanic	18+ Pop	% 18+ Pc	Black 18+	% 18+ Black	18+ Hispa	% 18+ Hispanic Origin
1	85082	1533	0.01835	82759	0.9727	613	0.0072	172	0.00202	684	0.00804	15	0.00018	217	0.00255	1288	0.01514	66997	0.78744	453	0.00676	772	0.01152
W. Sen	44711																						
Orc Park	29054																						
Elma	11317																						
2	82783	-766	-0.00917	31353	0.37874	40049	0.48378	669	0.00808	4138	0.04999	52	0.00063	3979	0.04807	10039	0.12127	64185	0.77534	29384	0.4578	6493	0.10116
Buffalo																							
3	84620	1071	0.01282	67098	0.79293	9936	0.11742	616	0.00728	894	0.01056	31	0.00037	3600	0.04254	10125	0.11965	65248	0.77107	6707	0.10279	6380	0.09778
Buffalo	66479																						
Lack	18141																						
4	80957	-2592	-0.03102	76766	0.94823	985	0.01217	132	0.00163	2002	0.02473	6	7.4E-05	210	0.00259	1174	0.0145	61173	0.75562	715	0.01169	672	0.01099
Clar	30673																						
Amherst	8680																						
Lan	41604																						
5	81587	-1962	-0.02348	75352	0.92358	2526	0.03096	2225	0.02727	316	0.00387	11	0.00013	428	0.00525	1540	0.01888	64324	0.78841	2420	0.03762	1120	0.01741
News	8594																						
Ton-Res	34																						
Alden	10865																						
Mar	5327																						
Aurora	13782																						
Wales	3005																						
Boston	8023																						
Colden	3265																						
Holland	3401																						
Brant	2065																						
Catt	1833																						
N. Coll	3523																						
Collins	6601																						
Concord	8494																						
Sar	2775																						
6	81142	-2407	-0.02881	64483	0.79469	9688	0.1194	357	0.0044	3348	0.04126	14	0.00017	1248	0.01538	3890	0.04794	64505	0.79496	6702	0.1039	2370	0.03674
Buffalo	27184																						
Amherst	26945																						
Ton-Twn	27013																						
7	84864	1315	0.01574	31162	0.3672	46313	0.54573	608	0.00716	1961	0.02311	33	0.00039	2115	0.02492	6283	0.07404	62465	0.73606	31896	0.51062	3606	0.05773
Buffalo																							
8	88226	4677	0.05598	77769	0.88147	7069	0.08012	223	0.00253	1336	0.01514	14	0.00016	459	0.0052	1900	0.02154	71774	0.81352	4911	0.06842	1112	0.01549
Cheek																							
9	80980	-2569	-0.03075	78538	0.96984	580	0.00716	404	0.00499	378	0.00467	13	0.00016	296	0.00366	1649	0.02036	63053	0.77662	396	0.00628	1000	0.01586
Hamb	56936																						
Evans	16356																						
Eden	7688																						
10	82058	-1491	-0.01785	77421	0.94349	1742	0.02123	348	0.00424	1168	0.01423	6	7.3E-05	377	0.00459	1808	0.02203	65904	0.80314	1242	0.01885	1105	0.01677
Grans Is	20374																						
Ton-Twn	46554																						
Ton-Cty	15130																						
11	86741	3192	0.03821	72543	0.83632	4430	0.05107	154	0.00178	7564	0.0872	24	0.00028	498	0.00574	2035	0.02346	70468	0.8124	3320	0.04711	1386	0.01967
Amherst			8.7																				

MUNICIPALITIES DIVIDED BETWEEN 2 OR MORE DISTRICTS

Amherst
Buffalo
Ton-Twn